

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE MACERICH PARTNERSHIP, LP, et al.,

Plaintiff(s),

v.

McCARTHY BUILDING COMPANIES, et al.,

Defendant(s)/Third-Party
Plaintiffs,

v.

PACIFIC ERECTORS, INC., et al.,

Third-Party Defendant(s).

NO. C03-2656P

ORDER ON THIRD-PARTY
DEFENDANT CADMAN, INC.'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

The above-entitled Court, having received and reviewed:

1. Third-Party Defendant Cadman, Inc.'s Motion for Partial Summary Judgment
2. McCarthy Building Companies, Inc.'s and SDL Corporation's Response to Cadman, Inc.'s Motion for Partial Summary Judgment
3. Third-Party Defendant Cadman, Inc.'s Reply in Support of Motion for Partial Summary Judgment

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS HEREBY ORDERED that the motion is GRANTED, and Third-Party Plaintiffs' claims against Cadman, Inc. for negligence, breach of contract, breach of warranty, breach of contractual duty to indemnify and breach of contractual duty to defend are dismissed with prejudice.

IT IS FURTHER ORDERED that Third-Party Defendant Cadman, Inc. shall be awarded attorney fees and costs reasonably associated with the bringing of this motion.

1 Partial summary judgment is awarded to Third-Party Defendant Cadman Inc. on the basis of
2 the legal arguments presented in their motion and the fact that Third-Party Plaintiffs failed to respond
3 to those arguments in their responsive briefing. The Court will treat that failure to respond as a
4 concession of the validity of the moving party's position. To the extent that the responding party's
5 briefing raised issues not before the Court on this motion (i.e., the ongoing validity of its claim for
6 breach of implied indemnity), the Court neither considered nor offers any ruling on those issues.

7
8 The clerk is directed to provide copies of this order to all counsel of record.

9 Dated: June 7, 2005



Marsha J. Pechman
U.S. District Judge